STATE OF MICHIGAN

COURT OF APPEALS

KIMBERLY GRIMSHAW,

Plaintiff-Appellee,

v

BARRONCAST, INC., and OAKLAND INDUSTRIAL SERVICES, INC.,

Defendants-Appellants.

UNPUBLISHED
February 2, 1999

No. 203107
Oakland Circuit Court
LC No. 95-506009 CZ

Before: Hood, P.J., and Neff and Markey, JJ.

MEMORANDUM.

In this sexual harassment action, defendants were granted leave to appeal the trial court's order denying their motion for summary disposition. We reverse and remand for dismissal of plaintiff's cause of action against defendants.

On appeal, defendants argue that the trial court erred in denying their motion for summary disposition because the release agreement between plaintiff and defendants' agent barred plaintiff's claim against defendants as principals for sexual harassment under the theory of respondeat superior. We agree.

Respondeat superior liability is an element of both hostile environment and quid pro quo sexual harassment claims under the Michigan Civil Rights Act, MCL 37.2101 *et seq*.; MSA 3.548(101) *et seq*. See, e.g., *Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993); *McCalla v Ellis*, 180 Mich App 372, 378; 446 NW2d 904 (1989)[1]. Under the doctrine of respondeat superior, an employer may be vicariously liable for the acts of an employee committed within the scope of his employment. *Helsel v Morcom*, 219 Mich App 14, 21; 555 NW2d 852 (1996). Because a principal sued solely under the doctrine of respondeat superior is not a joint tortfeasor, *Felsner v McDonald Rent-A-Car, Inc*, 193 Mich App 565, 568; 484 NW2d 408 (1992), if the agent is released from liability, the principal must be discharged from vicarious liability as well. *Theophelis v Lansing General Hosp*, 430 Mich 473; 424 NW2d 478 (1988); *Larkin v Otsego Memorial Hosp*, 207 Mich App 391, 393; 525 NW2d 475 (1994). "Any other result would be illogical and unjust because

release of the agent removes the only basis for imputing liability to the principal." *Theophelis, supra* at 491.

In the instant case, plaintiff released defendants' agent and the alleged harasser, Daniel Piel, from "all actions, causes of action, claims, . . . arising out of, based on or relating to her employment . . . ." Plaintiff's complaint seeks to hold defendants liable for Piel's alleged harassment of her, and does not allege a basis of liability that is unrelated to Piel's alleged actions. Accordingly, the rules of agency, including the principal-agent release rule, apply. When plaintiff released defendants' agent from all liability, defendants, as principals, were also discharged from any claims of vicarious liability.

Reversed and remanded for entry of an order dismissing plaintiff's action with regard to defendants. We do not retain jurisdiction.

/s/ Harold Hood
/s/ Janet T. Neff
/s/ Jane E. Markey

[1] The United States Supreme court recently has stated that the terms quid pro quo and hostile work environment are of limited utility, except to make a "rough demarcation between cases in which threats are carried out and those where they are not or are absent altogether. . . ." *Burlington Industries, Inc v Ellerth,* ___ US ___; 118 S Ct 2257, 2264; 141 L Ed 2d 633 (1998).